



TRIBAL ENGAGEMENT FOR TWIN PINES SAS 2018-00554

U.S. ARMY CORPS OF ENGINEERS

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Regulatory Program

5 April 2022

Subject: Summary of USACE's Tribal Coordination with the Muscogee (Creek) Nation (MCN) Regarding the Twin Pines Minerals Project

Overview: The Twin Pines Minerals (Twin Pines) mining project is a proposed titanium mine located in the vicinity of the Okefenokee National Wildlife Refuge in South Georgia. Tracts associated with the Twin Pines mining project include more than 12,000 acres.

The U.S. Army Corps of Engineers (Corps) is responsible for implementing Section 404 of the Clean Water Act (CWA), which regulates the discharge of dredged or fill material into waters of the United States (WOTUS). Because the Twin Pines mining project would result in the discharge of dredged or fill material into aquatic resources, including wetlands, the project may be subject to regulation by the Corps under the CWA. The Corps' Savannah District (district) has been working with Twin Pines for the past several years to 1) identify aquatic resources that are or may be subject to regulation under Section 404 of the CWA and 2) process and evaluate CWA permit application materials that Twin Pines has submitted to the district in support of the proposed project. A major concern that has been identified with respect to the Twin Pines mining project is its potential to affect the hydrology of the surrounding landscape.

Timeline: Beginning in 2018 and continuing through 2020, the district reviewed and verified multiple delineations of aquatic resources on numerous tracts associated with the Twin Pines mining project. A verified wetland delineation can be used to support a Section 404 permit application. When evaluating an application without an associated jurisdictional determination (JD), the Corps presumes that all delineated aquatic resources are jurisdictional under the CWA. Under the regulations in effect at that time, most wetlands and other aquatic resources would have been considered jurisdictional, so it was common for permit applicants to forgo the JD process and for the district to process permit applications supported by a verified wetland delineation. In this manner, Twin Pines proceeded with development of its CWA permit application materials based simply on the aquatic resources delineations that had been verified by the district, and no formal JD was requested by Twin Pines at that time.

It should be noted that the Corps does not currently conduct, nor has it historically conducted Tribal coordination specifically on verifications of aquatic resource delineations or JDs. Aquatic resource delineation verifications and JDs are based on regulation, policy and guidance administered by the Corps and the U.S. Environmental Protection Agency (EPA). Delineation of wetlands is based on the presence or absence of three indicators: hydric soils, hydrophytic vegetation and wetland hydrology of the site, and JDs are based on traditional navigable waters (TNWs), hydrologic connectivity to TNWs, and the physical, chemical, and biological effects that aquatic resources have on downstream TNWs.

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Twin Pines first submitted a CWA Section 404 permit application for the Twin Pines mining project on 5 July 2019, and the district issued a public notice for that initial application on 12 July 2019. The initial Twin Pines mining project proposal was based on the aquatic resource delineations that the district verified between 2018 – 2020 and included temporary impacts to 522 acres of wetlands and 2,454 linear feet of tributaries and permanent impacts to 65 acres of wetlands and 4,658 linear feet of tributaries.

The public notice for the initial Twin Pines mining project closed on 12 September 2019 (the comment period was extended to 60 days to allow additional time for agency and public comment). More than 21,000 comments were received during the public comment period. As a result of interest expressed by the Muskogee (Creek) Nation (MCN) in response to this public notice, beginning in February 2020, the district Archeologist and Tribal Liaison initiated monthly calls with the MCN to facilitate increased communication with regards to the Twin Pines mining project.

Staff from the district's Regulatory Program office met with Twin Pines on 11 December 2019 and again on 15 January 2020 to discuss the likelihood that the Twin Pines mining project could require preparation of an Environmental Impact Statement (EIS). Based on comments received in response to the public notice for the original mining proposal, Twin Pines withdrew its application on 7 February 2020 and stated that it would prepare a new application for a smaller scale demonstration project. The district Archeologist continued the ongoing monthly calls with the MCN following the withdrawal of Twin Pines original application and, during the February 2020 call, the MCN expressed concern about the Twin Pines project's potential impacts to ecological resources, sacred sites, and historic properties.

On 6 March 2020, Twin Pines submitted an application for a smaller demonstration project (Twin Pines Demonstration Project) consisting of a total project footprint of 898 acres. Like its original (2019) permit application, the Twin Pines Demonstration Project relied on verified wetland delineations to document the (presumed) jurisdictional aquatic resources within the project area. The district issued a public notice for the Twin Pines Demonstration Project on 13 March 2020. By letter dated 10 April 2020 addressed to the District Engineer, the MCN requested that the public notice comment period be extended. Due to considerable public interest in the Twin Pines Demonstration Project, the original 30-day comment period was extended to 28 May 2020, and a virtual public meeting was held on 13 May 2020. The virtual public meeting was attended by 139 on-line attendees, including representatives from the MCN, and 85 call-in only attendees. More than 30,000 comments were received during the public notice comment period.

During the district's review of the Twin Pines project there were numerous changes to the tracts of land involved and to the areas for which delineations and JDs were requested, issued, or withdrawn. The changes were due to several factors, including changes in Twin Pines' property rights on numerous tracts of land owned by other entities, changes in jurisdictional regimes, and changes to the mining plans. On 22 June 2020 the Navigable Waters Protection Rule (NWPR) became effective and Twin Pines submitted requests for three (3) approved JDs (AJDs) under the NWPR on 28 September 2020, 16 December 2020, and 21 June 2021. These 3 AJD requests covered three separate areas and included portions of the larger areas on which the district had previously verified aquatic resource delineations on during 2018 –

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2020. While the requests for AJDs were being reviewed under the NWPR, the district continued to process the application for the Twin Pines Demonstration Project.

The Corps issued the first of the 3 requested AJDs under the NWPR (NWPR AJD #1) on 15 October 2020, verifying 376 acres of non-jurisdictional, non-adjacent wetlands, resulting in a contiguous 1,060 acres of land with no federal jurisdiction under Section 404 of the CWA. As a result of the non-jurisdictional determination under NWPR AJD #1, Twin Pines withdrew their permit application for the Twin Pines Demonstration Project on 21 October 2020, and the Corps announced this withdrawal via public notice on the same date. The second AJD issued under the NWPR (NWPR AJD #2) was issued on 24 March 2021, and verified 180 acres of non-jurisdictional wetlands, resulting in an additional 329 contiguous acres with no federal jurisdiction under the CWA. NWPR AJD #1 and #2 together resulted in 1,389 contiguous acres with no federal jurisdiction under the CWA and covered a substantial portion of the permit area for the original Twin Pines mining project and all of the permit area for the Twin Pines Demonstration Project.

On 30 August 2021, the NWPR was vacated. The third pending request for an AJD under NWPR (NWPR AJD #3), which was submitted on 21 June 2021, was not issued prior to the vacatur of the NWPR and was withdrawn.

During March of 2021, the MCN inquired to the district via email about the process for tribal consultation on JDs. In response, on 16 April 2021, the district provided the MCN with the 4 January 2021 USACE Memorandum from Assistant Secretary of the Army for Civil Works, Mr. R.D. James, directing the Corps' Regulatory Program to not consult with tribes regarding AJDs. On 20 April 2021, that Memorandum was rescinded, and the MCN was notified of the rescission of the Memo during the subsequent regular monthly consultation teleconferences. The district's monthly consultation teleconferences with the MCN have continued to present day. The district does not currently have any pending regulatory action associated with Twin Pines.

Points of Contact: Mr. Tuner Hunt-Tribal Historic Preservation Officer with MCN.

Path Forward: Continue monthly tribal consultation meetings with Tribal Historic Preservation staff, including MCN. The district-MCN tribal consultation meetings are held on the 4th Thursday of each month.